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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

JETT P. BENEDICT,

Defendant and Appellant.

B237185

(Los Angeles County
Super. Ct. No. VA117873)

APPEAL from a judgment of the Superior Court of Los Angeles County.
Dewey Lawes Falcone, Judge. Affirmed.

Murray A. Rosenberg, under appointment by the Court of Appeal, for Defendant
and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney
General, Lance E. Winters, Assistant Attorney General, Paul M. Roadarmel, Jr., and
Robert C. Schneider, Deputy Attorneys General, for Plaintiff and Respondent.

Jett Benedict was convicted by a jury of assault with a deadly weapon, with a finding that he inflicted great bodily injury. On appeal, Benedict contends that the verdict is not supported by substantial evidence. Although the testimony of the victim and an eyewitness varies in the details, it is sufficient to support a conviction. The jury did not believe defendant's claim of self-defense. We affirm.

FACTS

Clements Wetzell's Testimony

On the night of December 4, 2010, Clements Wetzell was driving on Arbor Road in Lakewood—near his sister's home and minutes from his own home—after dining at a restaurant. Wetzell moved to the side of the road and stopped to send a text message on his cell phone, with his left arm resting on the open window sill. A short distance behind his car, a man and a woman were on the sidewalk, arguing.

As Wetzell used his telephone, he heard a male voice behind him say "Move the fucking truck." Wetzell was surprised, as he was on a public street and not blocking a driveway. He pulled forward two car lengths and continued using his telephone. The male voice made a second demand for Wetzell to move. Wetzell replied that he could park wherever he wanted, but pulled forward another two car lengths.

Wetzell heard nothing more from the voice behind him. Suddenly, he felt a burning sensation in his left arm, saw puncture wounds, and realized that he was bleeding. Wetzell immediately jumped out of the car and said to his assailant, "What the hell is wrong with you?" Wetzell identified his assailant as defendant Benedict.

Wetzell denied threatening defendant before the stabbing. He also denied challenging defendant to a fight, or punching defendant or kicking him, or touching him in any way. Wetzell was not carrying a weapon. He did not flail his arm or accidentally cut himself on defendant's knife.

Defendant promptly entered his house after the stabbing. Wetzell and his passenger, Daniel Siverio, followed defendant. Wetzell left a trail of blood from his truck, along the sidewalk, and up to the steps of the house. Wetzell sat down in front of

defendant's home because he felt faint. Defendant's parents came out and assisted Wetzell by trying to staunch the bleeding. Wetzell saw defendant inside the house.

Paramedics took Wetzell to the hospital, where he had surgery on his arm, received 60 stitches, and was released eight hours later. His arm was painful for five weeks, and he was unable to perform his job as an equipment operator or lift heavy objects. Wetzell asked defendant's parents to help defray the expenses he incurred as a result of the stabbing: they paid him \$6,500.

With regard to Wetzell's injuries, it was stipulated that he suffered a 30-centimeter (11.8 inch) laceration in his upper arm that filleted open the left triceps muscle so that it was widely gaping. In addition, there were two lacerations on his forearm, each about six centimeters long. Muscle was exposed in these wounds as well.

Daniel Siverio's Testimony

Wetzell's passenger Daniel Siverio testified that he and Wetzell dined on the evening of December 4, 2010, and consumed two or three beers with their meal. Afterward, they went by the home of Wetzell's sister, but she was not there. As they drove down Arbor Road, Siverio saw a man—whom he identified as defendant Benedict—arguing with a woman on the side of the road.

Wetzell stopped near the couple while using a telephone to try and locate his sister. Siverio heard a male voice yell, "Do you fucking mind. We're having a private conversation." At Siverio's suggestion, Wetzell pulled forward about two car lengths. After the car pulled forward, Siverio heard the male voice say, "Move the fucking car." Wetzell replied, "What the fuck is your problem?" and "I can park wherever I want." Wetzell did not challenge defendant to a fight or punch him. Wetzell moved the car forward a second time, another two car lengths. He was not blocking a driveway or any cars.

Siverio noticed that defendant was quickly approaching the car. Defendant made two jabbing motions at Wetzell, who was sitting and texting. Wetzell did not flail or swing his arm outside the car window. Siverio jumped from the car and saw defendant

run toward his house with a knife in hand. Siverio and Wetzell followed defendant; Wetzell was asking defendant why would he do this.

Siverio was frightened when he saw Wetzell's wound: blood was pouring out and he could see muscle inside the cut. Siverio called 911. Defendant's parents came out of the house. They wrapped a towel around Wetzell's arm while waiting for the paramedics and police to arrive. Defendant did not come out of the house.

Law Enforcement Testimony

Sheriff's deputies arrived at the scene at 10:29 p.m., and found Clements Wetzell on the porch of defendant's residence. He was being assisted by defendant's parents, who had wrapped his arm in a towel. Defendant's father told the deputies that the person who stabbed Wetzell was inside the house. He identified the suspect as his son.

The deputies found defendant in the dining room of the residence. They did not see any swelling, redness or injuries on defendant's face, nor did he complain of an injury. He did not request medical assistance. Defendant told the deputies that the weapon was in his bedroom. They retrieved a folding knife with sharp blades.

Defendant was advised of his constitutional rights, and indicated that he wished to speak to the deputies. He told the deputies that he was standing by his girlfriend's car when the victim drove up and stopped. Defendant was upset, because he was trying to have a private conversation with his girlfriend, and demanded that Wetzell move his car. Wetzell moved the car only three feet, causing defendant to become more upset. Defendant made a second demand for Wetzell to move, to which Wetzell replied, "I can park wherever I want," and "Do you want to fight?"

Defendant told a deputy he was frightened because his arm was sore from a recent injury. He decided to use a knife he was carrying to scare Wetzell away. He held it above his head, with the blade pointing forward, and said, "Do you want to fight now?" Seeing the weapon, Wetzell began flailing his arms and cut himself on the knife. After cutting himself, the victim opened the car door, punched defendant in the face and kneed him in the abdomen. The deputy examined defendant's face with a flashlight to check for marks or bruises. There were none.

Defendant was arrested. The deputy who processed defendant at the jail at 11:55 p.m. spoke to him face to face during the booking process, and did not see any red marks on defendant's face. The deputy completed a medical screening form, signed by defendant, that does not list any injuries. Defendant was asked, "Do you have any injuries or medical problems?" and answered "none."

In an interview shortly after the incident, Siverio told deputies that Wetzell stopped his vehicle in front of defendant's residence, prompting defendant to complain that he was interrupting a private conversation. Wetzell initially ignored defendant and continued to use his telephone, then moved his vehicle 15 feet. Defendant told Wetzell to go somewhere else to use his cell phone. Wetzell answered, "What's your problem, I'm talking on the phone." Defendant became agitated and stabbed Wetzell twice in the left arm. Siverio left the passenger seat, came around the back of the car and saw defendant stab Wetzell in the arm a third time.

Deputies interviewed Wetzell twice, once in the hospital, after surgery, and a few days later by telephone. Wetzell stated that he pulled to the side of the road to use his telephone, near defendant and his girlfriend, who appeared to be having an argument. Defendant yelled at him to move the car, and Wetzell replied, "I'll park wherever I want," but moved his car away from defendant to avoid any problems. He then felt a burning sensation in his arm, saw blood, and realized that he had been cut. He jumped out of his vehicle and saw defendant run into a nearby house.

Defendant's Testimony

Defendant testified that he was standing next to his girlfriend's car when Wetzell drove up and stopped nearby. Defendant politely asked Wetzell to move because he and his girlfriend were having a private conversation and wished not to be overheard. Defendant was not upset. Wetzell replied, "Okay" and moved his vehicle about three feet forward. When defendant realized that Wetzell was still nearby, he again asked him to move, in a calm voice, without cursing. Wetzell became agitated and said that he was trying to make a telephone call, adding, "I can park wherever I want."

When defendant suggested that there was plenty of parking down the block, Wetzell became even more agitated and asked, “Do you want to fight me?” Defendant felt threatened that Wetzell “was going to kick my ass.” He was surprised because he was not looking for a confrontation. Defendant feared he would lose a fight, owing to an arm injury he sustained one day earlier while engaging in horseplay with a coworker. Defendant’s arm felt numb and he had difficulty moving his fingers.

Defendant pulled out a knife and pointed it at Wetzell to scare him away.¹ Holding the knife near his head, “I asked him if he still wanted to fight me.” Instead of leaving, Wetzell began flailing his arms, kicked defendant, and cut himself on defendant’s knife. Defendant did not intend to stab Wetzell.

Wetzell got out of his car and began following defendant, who retreated to his house. His parents came out of the house and put towels on Wetzell’s arm to slow the bleeding. Defendant remained inside, “just trying to think about what had happened.” He did not resist the police when they arrived, and told them where to find the knife. He also told them about his arm injury, but they incorrectly noted on the medical form that he had no injuries. Defendant acknowledged that his father warned him not to carry knives.

Defendant’s Witnesses

Defendant’s high school English teacher testified that when defendant attended his class several years ago, defendant was cordial, friendly, courteous, a good student and fun to be around. A friend testified that defendant hurt his arm on December 3, 2010, while playing with a wooden sword.

Defendant’s private investigator interviewed the victim, who recounted that he stopped his vehicle to use his telephone near a couple standing on the sidewalk. A male voice yelled at him, “Move your fucking truck.” Wetzell continued to use the telephone. Suddenly, someone came to the driver’s door and attempted to stab his neck, but Wetzell

¹ Defendant works at a knife store and collects knives.

moved and the suspect instead slashed his arm. Realizing that he was bleeding, Wetzell chased the suspect to his house. Wetzell recognized defendant, at whom he sometimes waved when Wetzell came to Arbor Road to visit his sister.

Daniel Siverio told the private investigator that he saw a couple standing by a parked car, near where Wetzell stopped to use his telephone. A male voice asked Wetzell to “please” move because “we’re having a private conversation.” Wetzell grumbled to Siverio, but moved his vehicle three car lengths down the street. Siverio got out of the car when he saw someone approaching Wetzell’s door. As he came around the vehicle, he saw Wetzell bleeding and defendant walking away with a knife in his hand. Wetzell was yelling, “What the hell’s wrong with you?” and defendant responded by saying, “You should have moved.” Wetzell walked up to defendant’s house and said to his mother, “Look what he did.”

PROCEDURAL HISTORY

Benedict was charged with assault with a deadly weapon, with an allegation that he personally inflicted great bodily injury. (Pen. Code, §§ 245, subd (a)(1), 12022.7, subd. (a).) He pleaded not guilty. The case was tried by a jury, which found defendant guilty of the assault and of inflicting great bodily injury. He was sentenced to one year in county jail.

DISCUSSION

Defendant acknowledges the parameters of appellate review. We draw all reasonable inferences in support of conviction, and do not usurp the role of the jury by reweighing the evidence, reappraising the credibility of witnesses or resolving factual conflicts. (*People v. Elliott* (2012) 53 Cal.4th 535, 585; *People v. Maury* (2003) 30 Cal.4th 342, 403.) Viewing the evidence in the light most favorable to the prosecution, the inquiry is whether “*any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” (*Jackson v. Virginia* (1979) 443 U.S. 307, 318-319; *People v. Bolin* (1998) 18 Cal.4th 297, 331; *People v. Wader* (1993) 5 Cal.4th 610, 640; *People v. Johnson* (1980) 26 Cal.3d 557, 576.)

The crime charged occurs when a person willfully commits an act with a deadly weapon, which by its nature would probably and directly result in the application of physical force on another likely to produce great bodily injury. (Pen. Code, § 245, subd. (a)(1); CALCRIM No. 875.) Self-defense may justify an assault with a deadly weapon if the defendant has an honest and reasonable belief that bodily injury will imminently be inflicted upon him; however, the jury must find that the defendant used reasonable force to repel a threat. (*People v. Minifie* (1996) 13 Cal.4th 1055, 1064-1069.) The jury in this case was instructed with defendant's theory of self-defense.

The jury rejected defendant's theory of self-defense when it found him guilty. Nevertheless, he argues on appeal that the statements and testimony of Wetzell and Siverio varied so much "as to render their testimony [at trial] on the issue of self-defense [] improbable and thus insufficient to support appellant's conviction. Indeed, Wetzell and Siverio appeared to be making up the facts as they went along to protect Wetzell"

When a defendant argues on appeal that testimony is inherently incredible, after the statements given by a witness were believed by the jury, "“there must exist either a physical impossibility that they are true, or their falsity must be apparent without resorting to inferences or deductions.”” (*People v. Barnes* (1986) 42 Cal.3d 284, 306; *People v. Thompson* (2010) 49 Cal.4th 79, 124.) It is not enough that the witness's testimony at trial "differed in some details from [his] previous statements and prior testimony at other proceedings." (*People v. Friend* (2009) 47 Cal.4th 1, 41.) The fact remains that "simple conflicts in the evidence [are] for the jury to resolve." (*Ibid.*) Here, defense counsel pointed out the evidentiary conflicts during closing argument to the jury.

The core facts of this case are essentially undisputed. Wetzell was driving on Arbor Road when he stopped to use his cell phone. Defendant and his girlfriend were conversing nearby when Wetzell stopped. Defendant took exception to Wetzell's proximity to his conversation and asked Wetzell to move his vehicle, several times. The only discrepancy is whether defendant couched his request for Wetzell to move in loud

profanity (per Wetzell and Siverio) or whether defendant was polite and calm (per defendant).

It is undisputed that defendant approached Wetzell's car. It is undisputed that defendant was carrying a knife and drew the weapon. There is no evidence that Wetzell was armed with any weapon. Rather, he was holding a cell phone.

The only point of contention is whether defendant deliberately stabbed Wetzell in the arm or whether Wetzell flailed his arms and cut himself—three times—on defendant's upraised knife. Unsurprisingly, the jury disbelieved defendant's version of events. Wetzell sustained wounds that were so deep that the underlying muscle was exposed, requiring surgery and 60 stitches. Defendant's testimony that Wetzell impaled himself three times on defendant's knife is unbelievable, even absurd. Even assuming that Wetzell moved his arm around, that action might produce defensive injuries on the forearm, but does not explain a gaping wound nearly one foot long that filleted the muscle in Wetzell's upper arm.

Minor variations in the details—in statements given to the police, to the private investigator and at the preliminary hearing—do not make the testimony at trial inherently incredible, physically impossible, or patently false. Whether defendant's girlfriend was standing or sitting; the exact words exchanged during the altercation; how far Wetzell moved his car; and Wetzell's reaction to the attack are ultimately immaterial. The material issues are whether defendant honestly feared for his safety and used reasonable force when he drew a weapon.

Defendant's own testimony at trial establishes that he possessed and brandished a deadly weapon. The jury did not believe defendant's claim of self-defense, particularly since he suffered no injury at the hands of the unarmed victim, according to the deputies who closely examined defendant's face when he claimed that Wetzell punched him. Instead, the jury believed the testimony of the victim and an eyewitness, resolving simple conflicts in their testimony in favor of conviction.

DISPOSITION

The judgment is affirmed.

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BOREN, P.J.

We concur:

DOI TODD, J.

ASHMANN-GERST, J.